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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/825,708	04/04/2001	Tracy D. Mallory	0033-051001	3105

7590 08/23/2006

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EXAMINER
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DAVIS, CYNTHIA L

ART UNIT	PAPER NUMBER
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2616

DATE MAILED: 08/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

A

<b>Office Action Summary</b>	<b>Application No.</b> 09/825,708	<b>Applicant(s)</b> MALLORY, TRACY D.	
	<b>Examiner</b> Cynthia L. Davis	<b>Art Unit</b> 2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 5/31/2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-15 is/are allowed.
- 6) ☐ Claim(s) 16-21, 23, and 25-28 is/are rejected.
- 7) ☐ Claim(s) 22 and 24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 16-21 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Objections***

2. Claim 28 is objected to because of the following informalities: "that that" in line 2 of the claim should be changed to "that". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 25-28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant needs to point out where exactly in the specification support for these claims is found.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 16-18 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Fischer.

Regarding claim 16, a method of sharing information among a plurality of stations on a communications network, each of the plurality of stations being capable of transmitting and receiving frames over the communications network between any one station and all other stations, comprising periodically broadcasting by one station to all other stations capabilities and status announcements sent in control frames is disclosed in Fischer, column 20, lines 1-10 (disclosing broadcasting their capabilities to the other nodes on the network; updated capabilities of a station would indicate the status of the station).

Regarding claim 17, the control frame including status flags determinative of one or more of: a version of protocol under which the communications network is operating, optional feature support, link-layer priority usage, and network configuration commands is disclosed in Fischer, column 2, lines 56-57 (protocol version).

Regarding claim 18, stations receiving the control frames make operational decisions based upon the agreed-upon flags without further interaction amongst the stations on the communications network is disclosed in Fischer, column 10, lines 10-18.

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Regarding claim 23, periodically broadcasting by at least one station to other stations on a communication network a control frame including a status announcement and an indicator of a current state of an operability associated with the at least one station, wherein the at least one station is operable to transmit and receive frames over the communications network between the at least one station and the other stations is disclosed in Fischer, column 20, lines 1-10 (disclosing broadcasting their capabilities to the other nodes on the network; updated capabilities of a station would indicate the status of the station).

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer. The control frame being transmitted by a station once per minute or upon a change in current status of the station is not specifically disclosed in Fischer. However, Fischer does disclose periodic broadcasts (column 20, line 3). It is generally considered to be within the ordinary skill in the art to adjust, vary, select, or optimize the numerical parameters in any system absent a showing of criticality in a particular recited value. The burden of showing criticality is on applicant. In re Mason, 87 F.2d 370, 32 USPQ 242 (CCPA 1937); Marconi Wireless Telegraph Co. v. U.S., 320 U.S. 1, 57 USPQ 471 (1943).

6. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer in further view of Yoshiyama. A second copy of a most recent control frame being transmitted by a station at a randomly selected interval after a

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control frame is sent by the station announcing a status change is missing from Fischer. However, Yoshiyama discloses in column 2, lines 9-13, nodes sending out multiple copies of command messages. It would have been obvious to one skilled in the art at the time of the invention to have the station send out a second copy of the control frame. The motivation would be to ensure that it was received by all stations on the network.

7. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer in further view of Book. The control frame being sent at a highest link layer protocol priority is missing from Fischer. However, Book discloses in column 5, lines 65-67, giving control frames higher priority than data frames. It would have been obvious to one skilled in the art at the time of the invention to send the control frames at the highest priority based on their frame type. The motivation would be to ensure that the control information is received so that the network may operate properly.

#### ***Allowable Subject Matter***

8. Claims 1-15 are allowed.

9. Claims 22 and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cynthia L. Davis whose telephone number is

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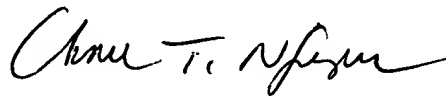
(571) 272-3117. The examiner can normally be reached on 8:30 to 6, Monday to Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau Nguyen can be reached on (571) 272-3126. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CLD  
8/6/2006

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8/6/06



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